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TO: U.S. Jesuit Conference
Association of Jesuit Colleges and Universities
Jesuit Secondary Education Association

FROM: Lawyers Committee for Human Rights

RE: Status of Jesuit Murder Investigation in El Salvador

DATE: July 27, 1990

This memorandum updates an earlier briefing memo prepared by the Lawyers Committee on April 12, 1990, which described events surrounding the killing of six Jesuit priests and two women at San Salvador's Central American University José Simeón Cañas (UCA) last November 16. It also examined the investigatory process conducted by presiding Judge Ricardo A. Zamora, outlining a number of unresolved concerns and unanswered questions pertinent to the investigation. This memo focuses on developments in the case in May, June and July. It discusses the current status of the court's investigation and examines obstacles to successful prosecution of both those in detention and others who may have ordered the killings.

On July 20, less than one week before this memorandum went to print, defense attorneys renewed their petition to transfer the case to Santa Tecla. If Judge Zamora rejects the petition, as he has in the past, the defense can appeal the ruling to a higher court, thereby staying the proceedings until that appeal is decided. This will take a matter of weeks and possibly months.

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I. KEY RECENT DEVELOPMENTS IN THE CASE

A. The Issue of Higher Orders

1. The 60 Minutes Interview with Col. Sigifredo Ochoa Pérez

On January 11, retired Col. Sigifredo Ochoa Pérez, once regarded as one of the Army's most effective field commanders, told *Diario de Hoy* that he hoped the investigation "would not be limited to subordinate levels, because somebody gave the order. Who gave the order? This is the million dollar question." The outspoken Ochoa, known as a maverick, is currently the head of the state-owned electrical company and a member of the ARENA assembly group.¹ Agence France Presse quoted Ochoa saying, "This action involved much higher officers, and even if a general or colonel is involved [the culprits] must be punished."²

Ochoa's comment foreshadowed a much more explicit charge he subsequently made during an interview with *60 Minutes* on April 22. According to Ochoa, a smaller group of officers gathered after the expanded High Command meeting on the evening of November 15.³ At this meeting, Ochoa said Col. Benavides was given a direct order to kill the Jesuits. Ochoa said: "They gave an order to kill leftists, just as Col. Benavides did. I'll say it again. Benavides obeyed, it wasn't his decision."

Despite unconfirmed reports that Ochoa had given the High Command some preview of his soon-to-be-public views, top officers reacted swiftly and defensively to Ochoa's statements. Speaking to the press on April 24, Defense Minister Gen. Rafael Humberto Larios said that Ochoa's accusation had "no basis because he has no access to confidential Armed Forces sources due to his retired status." Further, according to Larios, Ochoa had contributed "to the defamation campaign being carried out abroad by interested parties, among them, the leaders of the FMLN-FDR."⁴

Ochoa responded with a six-point statement calling for a thorough housecleaning of the Armed Forces, referring to the process as *depuración* (purification).⁵ As to whether Col. Benavides acted on higher orders, Ochoa said: "I have done nothing more than say publicly what the people are saying and expressing in a low voice." Later, Ochoa added: "It's one thing to fight clean against the

¹In January 1983, Ochoa, then commander of Detachment #2 in Cabanas, led a rebellion against Defense Minister José Guillermo García when he attempted to send Ochoa into diplomatic exile in Uruguay. Known as a skillful commander trained in Israel and Taiwan, Ochoa has historically been resentful of U.S. advice and pressures on the Armed Forces. In the aftermath of the rebellion, Ochoa spent 18 months in Washington, before returning to head up the strategic El Paraiso base in Chalatenango. García was ultimately removed as Defense Minister. See *Washington Post*, Jan. 8, 1983; *New York Times*, Jan. 13, 1983; *Financial Times*, Feb. 13, 1985.

²Paris AFP in Spanish 2112 GMT, Jan. 12, 1990, as cited in Foreign Broadcast Information Service, Latin America Daily Report [hereinafter FBIS-LAT] 90-010, Jan. 16, 1990.

³See Lawyers Committee memorandum to U.S. Jesuit Conference of April 12, 1990, p. 3. On the evening of November 15, top officers gathered at High Command headquarters to discuss how to turn the tide of the guerrilla offensive in the Army's favor. Among the decisions taken was to step up the air war. There was early speculation that the killing of the Jesuits was also raised at this meeting, or that Col. Benavides could have misunderstood an order to move against the "ringleaders" of the FMLN. See *San Francisco Examiner*, Feb. 5, 1990; *Baltimore Sun*, Feb. 4, 1990; *Miami Herald*, Feb. 5, 1990.

⁴*El Diario de Hoy*, Apr. 25, 1990.

⁵*El Mundo*, Apr. 26, 1990.

enemy [. . .] and when you fight, there are deaths. But I repeat, it's one thing to kill in combat and quite another to kill in cold blood."⁶

In a full-page advertisement in the two morning dailies on May 2, the Armed Forces of El Salvador "[r]ejected emphatically and categorically" Ochoa's statements, which they termed "irresponsible and tendentious, seeking to generate confusion and distrust."⁷ The advertisement also said

[t]hat the military has been subjected to a premeditated and systematic campaign of disinformation and defamation, which has greatly served the enemies of the Fatherland to destabilize the whole process and make even more difficult the search and attainment of social harmony and peace for which our people yearn. We condemn such irresponsible statements as they seek to undermine the institutionality of the state, and only favor the dark and nefarious interests of the enemies of democracy.⁸

Asked whether the State Department would seek additional information concerning a second meeting of top officers on the night of November 15, spokeswoman Margaret Tutwiler said: "No, I'm not going to seek additional information . . . there's no reason to do that."⁹ For his part, President Cristiani responded with what has become his constant refrain with respect to the Jesuit case:

I regret that the public media continues to speculate on, and to a certain extent, politicize this case. [. . .] If Col. Ochoa has any information to offer, he should bring it to the attention of the Fourth Penal Court judge and let him handle the case. [. . .] I am only saying that I do not believe it is right to speculate on cases that are being handled by the Judicial Branch.¹⁰

President Cristiani said that he was not at this point going to say "if Col. Ochoa is mistaken or if he is right." He did note the irony in that the much-maligned Ochoa was now being embraced by his erstwhile political foes:

It is very interesting to see that whereas before no one would believe Col. Ochoa, all of a sudden everyone wants to give him all the credibility in this case. I am not saying that what he said is true or untrue. My point is that it should not be debated publicly; that anybody -- Col. Ochoa, members of the Jesuit community, or anybody else -- who has any information with respect to the trial should go to the judge and give him that information because that would be helping the process and not mere speculations in public.¹¹

⁶Diario Latino, May 2, 1990.

⁷El Diario de Hoy, May 2, 1990; La Prensa Grafica, May 2, 1990; see also, Canal Doce Television, May 2, 1990, as cited in FBIS-LAT-90-085, May 2, 1990.

⁸Id.

⁹Associated Press, as reported in El Mundo, Apr. 24, 1990.

¹⁰San Salvador Domestic Service, Apr. 26, 1990, as cited in FBIS-LAT-90-082, April 27, 1990.

¹¹Id.

Gregorio Rosa Chavez, Auxiliary Bishop of the Catholic Archdiocese of San Salvador, told *La Jornada* in early May that:

Both the Society of Jesus and we have always maintained that we don't believe that such a barbaric act could have simply resulted from a decision taken by Col. Benavides. Now this same opinion is coming from the lips of someone who knows the Armed Forces to the core -- Col. Ochoa.

You have to ask, who are the officers superior to Col Benavides. This takes you definitely to the High Command. This is why Col. Ochoa's revelation is so dramatic. It is obvious that the matter would lead to the offices of the High Command.¹²

At the request of the Attorney General's office, Col. Ochoa was asked on May 6 to provide written answers to a series of questions posed by Judge Zamora, which he did on May 18.¹³ In his statement Ochoa says he based his view that Benavides did not act alone "on the procedures determining how decisions are taken in traditional military actions" and ran through the steps of how an order is carried out. He said the murders had "their origin in the attitude of extremist sectors, and the number of people involved and the form of their execution indicates a pre-conceived plan . . .

"

2. Junior Officers Issue Communiqué Raising Issue of Higher Orders

Over the years, discontent among young officers has periodically surfaced as those who bear the brunt of the war express their differences with top-level commanders. Some of these younger officers charge that their superiors do not regularly risk their lives in combat, and are now often enriching themselves through war-related activities. Since November, an anonymous group of junior officers at times employing the name "Domingo Monterrosa Vive"¹⁴ have issued several communiqués including, among other issues, their views on the course of the Jesuit case.¹⁵ In strong language the officers criticize the "treason" of the U.S. Embassy, charge that the High Command is obstructing justice, and support Col. Ochoa's view that Benavides acted on higher orders. They say that from the beginning three top officers -- Col. René Emilio Ponce, head of the High Command, Col. Inocente Orlando Montano, Vice-Minister of Public Security, and Col. Juan Carlos Carrillo Schlencker, head of the National Guard -- argued that only the lieutenants, not Col.

¹²*La Jornada* (Mexico City), May 8, 1990.

¹³As a member of the Legislative Assembly, Ochoa has the prerogative of answering a court summons in writing.

¹⁴Lt. Col. Domingo Monterrosa and other senior eastern front officers died in October 1984 in a helicopter crash caused by sabotage. Though the FMLN assumed responsibility, speculation persists over who was responsible for sabotaging his helicopter, which went down over Cacaopera in northern Morazán province. Various versions circulated at the time suggesting that the FMLN, the military itself, or even the Duarte government could have been responsible, allegedly because Monterrosa was said to oppose peace talks with the guerrilla movement. He was known as an extremely effective field commander who was well liked by his men. See *The New York Times*, Oct. 25 and Nov. 28, 1984; *The Christian Science Monitor*, Nov. 30, 1984.

¹⁵Four communiqués have appeared since November 30. The use of different names by the signatories has given rise to speculation that the documents have not been issued by the same group of individuals and that some may have been issued by groups outside the Armed Forces.

Benavides, should be prosecuted.¹⁶ Following are some excerpts from their five-page letter dated May 1:

A few hours after the [murders] many of us surmised what had happened; we the young officers are those who are best informed, we are those who bear the weight of the war, we are those who comply with orders given by our superiors and in the end are those who suffer the consequences of superiors who at times give orders without reason or sense, yet they are orders nonetheless. Many of us thought that the case would not have any repercussions because the activism of the priests within the FMLN is well known. But there was cause for concern that the [killings] would unleash a backlash, and we felt from the beginning that it was an irrational and meaningless act because open combat against terrorists is one thing and against ideologues quite another.

[A]ccording to the regulations of our institution, Col. Benavides' superior is Col. Zepeda, and above him, the Minister of Defense; the question is, who besides Col. Benavides was involved in the operation? What happened at the meetings that were held at 3:00 p.m. and 5:00 p.m. in the office of Col. Zepeda? Not only Col. Benavides attended, but also junior officers. All this is known by the High Command.

The Ochoa case should be considered more carefully; his position is supported by many young officers, and also by some of our superiors. He has said something which many of us cannot express because we would be punished.¹⁷

The High Command rejected the group's letters as "gray propaganda" put out by the FMLN.¹⁸ President Cristiani also suggested that the FMLN might be responsible and said he has never given "much credit to anonymous [letters] concerning political questions"¹⁹

B. Developments in the Judicial Process in the Aftermath of the Moakley Report

Publication of the *Interim Report of the Speaker's Task Force on El Salvador*, commonly known as the Moakley report, marked a turning point in the Jesuit case in El Salvador. The task force report, which was published on April 30, summarized its findings in five points: (1) The Jesuit killings reflect an institutional problem within the Salvadoran Armed Forces and major reforms of the institution are necessary. (2) In some respects, the investigation shows "progress," in that at the outset "good police work was done." (3) Despite "good police work," arrests might not have been made if it were not for the testimony of a U.S. major who stepped forward in what proved to be a watershed event. (4) Little effort has been made to determine if Col. Benavides was acting on higher

¹⁶See open Letter from the Movement of Young Officers "Domingo Monterrosa Vive" to the President of the Republic and Commander in Chief of the Armed Forces; to our Chiefs of the High Command; to Members of the Legislative Assembly and Cabinet Ministers; to the domestic and international press and to the Salvadoran people, May 1, 1990, as reported in Diario Latino, May 4, 1990.

¹⁷Id.

¹⁸Canal Doce Television, May 4, 1990, as cited in FBIS-LAT-90-087, May 4, 1990; Canal Doce Television, May 22, 1990, as cited in FBIS-LAT-90-103, May 29, 1990.

¹⁹Diario Latino, May 3, 1990.

orders. (5) The investigation and preparations for prosecuting the case had come to a virtual standstill at the time of publication.²⁰

The Moakley report has been entered into the official court record. Based on information contained in the report, Judge Zamora has been able to trace investigative leads concerning the participation of Department of National Intelligence (DNI) agent Lt. Cuenca Ocampo in the November 13 search of the Jesuit residence, and information provided by U.S. Major Eric Buckland (see below). The number of witnesses has increased, and important aspects have been revealed.

A series of steps initiated by Judge Zamora have led to significant disclosures concerning a cover-up of the crime. These disclosures suggest a pattern of failure on the part of the Salvadoran Armed Forces to cooperate fully in the current investigation. Military witnesses often fail initially to answer the judge's summons. Many of those who testify are highly uncooperative, and fail to recall even basic events surrounding the killing. Many new witnesses have given testimony but most of the new information revealed to date concerns the cover-up. Some military witnesses have provided contradictory testimony. Another officer, not previously linked to the crime, has been charged in the cover-up. Yet virtually no progress has been made in examining the question of whether Col. Benavides was acting on higher orders. Nor has new evidence been added to the cases against those already charged.

In response to the report's criticism that the case had come to a "virtual standstill," the Supreme Court now issues frequent press releases summarizing the testimony and findings recorded by the court. Supreme Court President Mauricio Gutiérrez Castro has repeatedly and publicly expressed his full support for Judge Zamora and the process.

While the report has had a positive impact on the judicial proceedings, it drew sharp criticism from political figures in the country. For his part, President Cristiani emphasized that it was an interim report and that no one could predict the outcome of the case.²¹ Reacting to the report's criticism that the case had stalled in the courts, the presidential spokesman said President Cristiani "expects that the case can be raised to the plenary or trial stage within 90 days."²² The Associated Press quoted President Cristiani on May 10 saying that while U.S. congressmen "can say [the case] is bogged down. But the truth is that it did not bog down." He lamented further that the Moakley report "gathered up speculations and sometimes tries to present them as facts. And this makes things difficult because it obstructs the judicial process."²³

The strongest critical reaction came from Supreme Court President Dr. Mauricio Gutiérrez Castro who said that "The flippant and irresponsible asseverations that the Jesuit case is stalled are a fallacy." Gutiérrez Castro offered his full support for Judge Zamora, who, he pointed out, as he has on numerous occasions, "also enjoys the confidence" of the Jesuits.²⁴

²⁰Interim Report of the Speaker's Task Force on El Salvador, Apr. 30, 1990, at 6-7 [hereinafter Interim Report].

²¹La Prensa Grafica, May 4, 1990; San Salvador Domestic Service, May 3, 1990, as cited in FBIS-LAT-90-087, May 4, 1990.

²²La Prensa Grafica, May 3, 1990. The case is currently in an investigative phase known as instrucción. The trial stage is known as plenario.

²³The Washington Post, May 11, 1990.

²⁴La Prensa Grafica, May 4, 1990.

Criticism by U.S. officials and the U.S. Congress of Judge Zamora's conduct of the prosecution has been firmly rejected by Dr. Gutiérrez Castro, by the Jesuits, and by Judge Zamora himself.²⁵ Responding to criticism in the *Washington Post* from U.S. Ambassador William Walker, Judge Zamora said, "Walker does not understand the judicial process in this country. Look at the case history. You'll see we've been working on it."²⁶ The Jesuit Provincial for Central America, Father José María Tojeira, observed that he was worried that the judicial system of El Salvador is being blamed for everything. "In my opinion, the judicial system of El Salvador is not the culprit. The system clearly has its drawbacks and weaknesses . . . but the major problem is created by groups which are stronger than the judicial system and which refuse to provide more information."²⁷ Observing that Judge Zamora "is doing what he can within his options at hand," Father Francisco Javier Ibisate, dean of the UCA economics department, nonetheless observed that it's "as though [Judge Zamora is] wearing lead boots that do not permit him to move."²⁸

II. PROBLEMS AND OBSTACLES IN THE INVESTIGATION

A. Confusion Regarding Who Was on Duty at the Academy: The Cadets

Illustrating the obstacles facing prosecution in the case, four cadets who the military said were on duty at the Military Academy on the night of the killings testified that in fact they were not on duty that night. Several months passed before Judge Zamora was able to cite those men who actually were on duty on November 15-16 and record their testimony. Those who admitted to being on duty failed to provide any useful information. The following narrative provides a chronological explanation of the developments.

On March 29, SIU chief Lt. Col. Manuel Antonio Rivas Mejía responded to a request from Judge Zamora by providing the names of four cadets at the Military Academy who according to Rivas were on guard duty at the main gate of the Academy on the night of the murders. The SIU document gives no indication of Rivas' source of the information. Judge Zamora requested the four to appear on April 16 in the belief that they might be able to shed some light on who entered and exited the Academy on November 15-16. In the first week of May, the court was informed that the four men had been sent outside the country to attend training courses in Panama and at Ft. Benning, Georgia. Speaking to reporters as he left the country to attend the inauguration of Costa Rica's new president, President Cristiani said that if the judge cited the cadets they would be brought back to appear before the court.²⁹

²⁵The Moakley task force reported that "[a]s of mid-April, the investigation and preparations for prosecuting the case have come to a virtual standstill." During this period, State Department and Embassy officials repeatedly blamed Judge Zamora for the lack of progress in the case. On May 4, U.S. Ambassador William Walker told the Lawyers Committee that "[i]n my opinion, the judge is doing nothing." Rep. Bud Shuster, a Republican who accompanied the Moakley group to El Salvador, told the *New York Times* on April 30, that "The judge is sitting on his hands." In light of developments since May, Embassy officials now recognize that Judge Zamora is not the problem. The *New York Times* quoted a "diplomat monitoring the case" on June 3, 1990, who said: "This isn't going anywhere fast. It's not going anywhere slowly. It probably isn't going anywhere." See *Interim Report* at 7; *New York Times*, May 1, 1990.

²⁶*Washington Post*, May 8, 1990.

²⁷San Salvador Canal Doce Television, May 16, 1990, as cited in FBIS-LAT-90-095.

²⁸*El Mundo*, May 17, 1990.

²⁹Radio Cadena YSU, May 7, 1990, as cited in FBIS-LAT-90-089.

On May 8, Zamora for the second time cited two of the cadets to appear.³⁰ José Wilfredo Aguilar and Erick Othmaro Granados Morán, testified on May 11. The remaining two, César Moisés Rivera Pérez and Raúl Galán Hernández, arrived at the court on May 15, accompanied by the attorneys representing the nine military defendants, and gave their statements.³¹ On May 17, the Supreme Court issued a communiqué stating that the cadets had denied they were on duty at the main gate on the night of the assassination; *Diario Latino*, an afternoon daily, said the cadets found it "strange" that the SIU mentioned their names in this context.³² Granados Morán, who says he was guarding a gas tank on the grounds of the Academy on November 15-16, said he saw no Atlacatl troops on the school grounds. Aguilar Alvarado, who was posted about 50 meters from the main gate, said he heard no explosions that night nor saw any Bengal lights.³³

On May 11, the judge asked the SIU to explain who provided the names of the four cadets. The SIU responded on May 25, and according to *Diario Latino* said the mistake "was an involuntary error that was detected afterward when the director of the Military Academy, Col. Ricardo Casanova Sandoval, ordered a thorough investigation . . ." ³⁴ In his report to Lt. Col. Rivas on May 24, Col. Casanova Sandoval said that his investigation of the incident revealed "an involuntary error -- the assignments corresponding to December 11-17, 1989 had been copied down, instead of those corresponding to November 11-17, 1989." All of the first group of cadets named were second year students. Since generally only third year students at the Academy are assigned to serve as *Comandante de Guardia*, the error should have been easily detected. It is striking that no one in a position to know about the error came forward to state that the wrong names had been provided. Considerable attention was given in the U.S. and Salvadoran press to the fact that the soldiers were sent abroad. It was only when these cadets were sent back to El Salvador and told Judge Zamora that they were not on duty that the story began to unravel. As a result, over two months passed before the correct guards appeared before the court.

On May 29, Casanova Sandoval provided Judge Zamora with the names of those who actually were on duty on the night of the killings. On June 8, Elio Ernesto Munguía Guillén (now at the First Brigade) and Walter Alberto Merino Vaquerano (Military Academy), two of the four cadets who served as *Comandante de Guardia* on November 15-16, finally appeared before the judge. The remaining two -- Gilberto Vanegas Zepeda (Belloso Battalion) and Norman Gilmar Peñate Larrama (Military Academy) -- appeared on June 13.

Munguía told the court that members of the Atlacatl, the Cavalry, Artillery Brigade and Detachments Nos. 6 and 7 were all present at the Military Academy on the night of the killings. Munguía said that under normal circumstances the Commander of the Guard notes events in the logbook himself. During his absence, his replacement takes notes on a piece of paper which the Commander of the Guard then transfers to the logbook. After the creation of a special command unit at the Military Academy on November 13, combat missions were not noted in the "book of events"

³⁰La Prensa Grafica, May 9, 1990; El Mundo, May 9, 1990.

³¹La Prensa Grafica, May 16, 1990.

³²Diario Latino, May 19, 1990; Radio Cadena YSKL, May 17, 1990, as cited in FBIS-LAT-90-097, May 18, 1990.

³³Luces de bengala are flares used to light up an area during combat. Two flares were sent up after the Jesuits were killed as a sign to retreat. Extremely powerful, Bengal lights provide near daylight conditions in the immediate area and can be seen for miles around. Jesuits and other neighbors sleeping in the area surrounding the campus have testified to having seen the lights, and several soldiers whose testimony is in the court record refer to the use of Bengal lights.

³⁴Diario Latino, May 29, 1990.

(libro de novedades).³⁵ Instead, Col. Benavides, as top commander, was notified and he recorded these events in a special book. He said he did not know if there was an incinerator on the grounds of the Academy. Munguía said that he was asleep from 1:00 to 5:00 a.m. on November 16, but that when he returned to his post his replacement said nothing had occurred during his absence. Merino Vaquerano told the court that he at no time saw Lt. Yushy René Mendoza, a 26-year-old Section Commander at the Academy who is in detention in connection with the slayings, enter or leave the Academy.

In a powerful editorial in the May 30 issue of the UCA weekly *El Salvador Proceso*, the University Center for Documentation and Information (CIDAI) observed:

At the end of March, the SIU also gave Judge Zamora the names of the four cadets who were asleep on the night of the assassination. As a result, the questioning of those who really were on guard duty that night has been delayed yet another month, to the detriment of memories prone to forgetfulness. At best, the cadets in question will give their testimonies more than six months after the date that the SIU should have questioned them if it had acted in a professional manner.³⁶

B. Destruction of Evidence: The Burning of Logbooks

On May 15, several U.S. newspapers ran a syndicated cartoon depicting Uncle Sam wringing his hands before a door marked EL SALVADOR. "Mercy Me," says Uncle Sam, "You say the evidence in the case of the murdered Jesuits DISAPPEARED? How did that happen?" In the second frame an officer in military uniform stands holding a smoking gun pointing at "Exhibit A," which has just been blown to pieces. The officer's answer: "In the usual fashion."

The cartoon proved prescient when on May 29 it was revealed that all the logbooks kept at the Military Academy during 1989 had been burned. The "missing" registry had figured prominently in the case since late March, when Lt. Col. Rivas of the SIU revealed that the Military Academy had informed him the log could not be provided because it had been "misplaced." Judge Zamora had sought the registry in the hope that it would provide evidence of who was on the grounds on the night of the killings, perhaps revealing the participation of others not currently linked to the crime.

In subsequent testimony before the court, Zamora learned that Lt. Yushy René Mendoza had burned the registry and some 70 other notebooks from 1989, allegedly on the orders of his superior.³⁷ Major Carlos Camilo Hernández, then acting assistant director of the Academy, is said to have ordered Mendoza and four cadets to collect the books from the school's archivist one evening between December 1 and 16, 1989. A defense attorney for Mendoza told the press after his June 6 court appearance that his client had admitted that he burned the registries but that it was a "a routine task."³⁸

³⁵El Diario de Hoy, Jun. 12, 1990; El Mundo, Jun. 12, 1990.

³⁶El Salvador Proceso, No. 430, May 30, 1990, at 4. The entire editorial appears in translation in the appendix.

³⁷El Mundo, Jun. 7, 1990.

³⁸La Prensa Grafica, Jun. 7, 1990; El Mundo, Jun. 7, 1990.

The Academy archivist, Juan René Arana Aguilar (a civilian), told the court on June 4 that sometime during the first two weeks of December, Major Carlos Camilo Hernández ordered him to gather together all the books from 1989 because they were to be burned.³⁹ Arana Aguilar testified that he and Hernández were alone when Hernández "gave him the order orally in a corridor of the Military Academy and the encounter was casual" He said that Lt. Mendoza came to get the logbooks, and while he knew they had been burned he did not know who had actually done so. Contradicting Mendoza, Arana Aguilar said that he had served as archivist since 1984 and it was the first time he had been given an order of this nature.⁴⁰ All the "documents in the central archive of the Military Academy stay there perpetually . . . they are not destroyed," he told the court.

On June 15, Lt. Col. Hernández appeared before the judge and denied that he had ordered the burning. Hernández said that at Col. Benavides' request he had asked the archivist if the logbooks from 1989 were at the Academy. He reported to Benavides that they were stored at the Academy and claimed that he had no further knowledge of the order to burn them. He said he did not know why the archivist and Yussy Mendoza had "involved him in the matter," and asserted that they were lying.

Lt. Col. Hernández offered further information about how the Academy was organized during the second half of November, details which could potentially lead to other revelations. Hernández said that in light of the guerrilla offensive, a "Security Commando" was created at the Military Academy, which took on battalion status. The normal command structure was duplicated at the Academy level, with officers assigned to head up S-1 (Personnel); S-2 (Intelligence); S-3 (Operations); and S-4 (Logistics). The officer in charge of S-3 was chosen by the High Command while the others were named by Col. Benavides, Lt. Col. Hernández said. Hernández himself was the coordinator of this Security Commando. The testimony of these individuals could shed light on how decisions were made on the night of the killings and by whom. Under normal operating procedures, the commander has to sign all orders concerning the mobilization of troops.

On June 14, Defense Minister Rafael Humberto Larios López transmitted to Judge Zamora a letter signed by the current director of the Military Academy, Col. Ricardo Alfonso Casanova Sandoval. In this letter the court was officially informed that there is no standing written or oral order to burn logbooks kept by the school. U.S. Ambassador William Walker pointed out that "[i]n my country the destruction of evidence is also a crime, and if it is the case that this evidence has been destroyed here, somebody has to pay the price."⁴¹

At the end of June, Judge Zamora ordered the detention of Lt. Col. Hernández for his alleged role in ordering the burning of the logbooks. Col. Ponce, head of the High Command, said Hernández was detained on July 7⁴² and charged with destruction of evidence.⁴³ On July 18, Lt. Col. Hernández arrived at the court but failed to enter his plea because his defense attorney, Dr.

³⁹Major Hernández was promoted to lieutenant colonel in early 1990 and is now the executive officer of the elite Ramón Belloso Battalion based in Ilopango. Philadelphia Inquirer, May 30, 1990; El Diario de Hoy, Jun. 5, 1990.

⁴⁰El Mundo, Jun. 4, 1990; El Diario de Hoy, Jun. 5, 1990.

⁴¹El Mundo, May 30, 1990.

⁴²Diario Latino, Jun. 27, 1990; La Prensa Grafica, Jul. 8, 1990.

⁴³The crime with which he is charged, encubrimiento real -- covered by paragraph 471 of the Criminal Procedure Code -- has a maximum sentence of 3 years. Defendants accused of most crimes in which the sentence does not exceed 3 years may be released on bail.

Carlos Castellon, had resigned. Dr. Castellon subsequently said he had been threatened by "undetermined sectors." Lt. Col. Hernández' defense will hereafter be handled by the team of attorneys representing the original eight military defendants.

C. Attempts by the Defense to Transfer the Case

On May 9, Judge Zamora rejected for the second time attempts by defense attorneys to transfer the case to the Second Criminal Court in Santa Tecla, Jurisdiction of Nueva San Salvador, La Libertad. On April 25, Zamora said that since the crime had been planned in the Military Academy, which is in his jurisdiction, he could rightfully continue proceedings. At Zamora's request, the Attorney General's office (*fiscalia*) issued two opinions on the question. On April 6, the *fiscalia* said that while crimes committed around the UCA do fall under the jurisdiction of Santa Tecla, the judge himself should decide on the defense attorneys' petition to transfer the case. On May 9 the *fiscalia* went further, urging the change in venue requested by the defense.⁴⁴ Judge Zamora nonetheless confirmed his prior ruling.

On July 20, defense attorneys renewed their petition to transfer the case to Santa Tecla, this time relying on a different provision of the Criminal Procedure code which allows for an appeal. Again, the *fiscalia* will be asked to give its opinion before Judge Zamora himself rules on the motion. If he again rejects the petition, the defense can take the matter to an appellate court, thereby staying the proceedings until that appeal is decided -- at least a matter of weeks and possibly months.

D. The Military's Continued Resistance to the Investigation

Statements by prominent members of the Armed Forces and the lack of candor and cooperation by military witnesses indicate that the Armed Forces as an institution is not committed to pursue the case wherever it may lead.

On May 4 the *New York Times* reported that President Cristiani also discounted charges that the armed forces high command was involved in the November murder of six Jesuit priests, asserting that the military leaders had been "very instrumental" in the investigation. "It's very difficult to believe that they would have done so if there was any involvement on their part," he said.

Yet in a nation where signals are all-important -- especially those emanating from an institution as powerful as the military -- statements by prominent officers do not suggest a willingness to pursue the question of whether Col. Benavides was acting on higher orders. Col. Juan Orlando Zepeda, the vice minister of defense to whom Col. Benavides may have reported that night, said on May 7 that he "emphatically rejected any linkage whatsoever of him or the High Command to this case."⁴⁵ Expressing his willingness to be questioned, Col. Zepeda said nonetheless, "the judge has no reason [to question me] because there is no justification which merits an investigation of me."

One ranking officer also expressed his belief that Col. Benavides is innocent. Col. Inocente Orlando Montano, Vice-Minister of Defense and Public Security, made his response to an article by syndicated columnists Rowland Evans and Robert Novak.⁴⁶ In the only interview granted to

⁴⁴This kind of petition is known as a recurso de revocatoria.

⁴⁵Diario de Hoy, May 8, 1990.

⁴⁶La Prensa Grafica, May 10, 1990; Washington Post, May 9, 1990.

journalists since his detention, Col. Benavides denied any involvement in the killings, which he said were "a surprise to me because I knew [Father Ellacuría] had been saying favorable things about [President Cristiani]" and that he assumed the FMLN had killed the priests. The defense of the eight defendants continues to be tightly coordinated by a group of attorneys with ties to the Armed Forces. One outstanding question is who is paying their fees. The defendants are still members of the military.

E. Recent Transfers of Ranking Officers in the Aftermath of the Killings

Six officers who have been linked to the killings or who have figured in the aftermath of the crime have been reassigned since the assassination.

1. In June, Atlacatl commander Col. Oscar Alberto León Linares was promoted to commander of Detachment No. 4 in the highly conflictive Morazán province. The Associated Press reported that León Linares bid farewell to his Atlacatl troops on June 6, saying: "You must remember that in front of us we have a terrorist combatant . . . but behind that combatant there are intelligent sectors that use any kind of calumny and other tricks to gain ground."⁴⁷
2. Col. Carlos Mauricio Guzmán Aguilar, who headed up the DNI during the November offensive, was sent to serve as military attache in Costa Rica in January.
3. Col. Joaquín Arnoldo Cerna Flores, roundly chastised for his performance during the offensive as chief of C-3 (Operations) at the High Command, now has a top position at ANTEL, the state telecommunications company. According to the State Department, Col. Benavides would have reported to Col. Cerna Flores or to Vice Minister of Defense, Col. Zepeda, on the night of the killings. One of the defendants in the case, Lt. Espinoza, has testified that Col. Cerna Flores ordered the November 13 search of the Jesuit residence.
4. Major Carlos Camilo Hernández -- acting deputy director of the Military Academy in November and December who is said to have ordered the burning of potentially pivotal evidence -- was promoted to lieutenant colonel in early 1990 and named second-in-command (executive officer) of the Belloso Battalion based in the San Bartolo section of Ilopango.
5. Col. Carlos Armando Avilés, chief of C-5 (Psychological Operations), was assigned to the Salvadoran Embassy in Washington as military attaché effective in January. Following the Buckland incident (described below), Col. Avilés' appointment was canceled. Avilés remains at C-5, where he has become a spokesman for the army's new human rights office operating out of the Psychological Operations department.
6. Captain Carlos Fernando Herrera Carranza, DNI chief of operations in November, was transferred to Detachment No. 4 in San Francisco Gotera, Morazán. Captain Herrera ordered a DNI agent to join Atlacatl troops in searching the Jesuit residence on November 13. On the morning of November 16, Captain Herrera interrupted a DNI meeting to announce that Father Ellacuría was dead. According to accounts in the U.S. press, the officers in attendance applauded.

⁴⁷As a major, León Linares was named by the court as one of three officers responsible for the February 1983 massacre of some 70 Indian peasants at Las Hojas. See Lawyers Committee for Human Rights, Underwriting Injustice: AID and El Salvador's Judicial Reform Program, at 27 (Apr. 1989).

F. The Role of the Military Honor Commission

On January 5, Defense Minister Rafael Humberto Larios appointed a group of military officers to a so-called Honor Commission on the Jesuit case. On Sunday January 7, President Cristiani said on Salvadoran radio and television that the Commission had been asked to "deduce responsibility in the case" and to "determine the exact circumstances [of the slayings] and clarify the truth in all its magnitude . . ."⁴⁸ Cristiani also said the Commission would work with the Special Investigative Unit. The members were chosen to represent a spectrum of the officer corps, from senior to junior officers, and it was initially reported that the panel also included several civilians. Those on the Commission were:

- Gen. Rafael Antonio Villamariona, commander of the Air Force
- Col. Dionisio Ismael Machuca, director of the National Police
- Lt. Col. Juan Vicente Eguizábal Figueroa
- Major José Roberto Zamora Hernández
- Captain Juan Manuel Grijalva Torres
- Dr. Antonio Augusto Gómez Zárate, attorney⁴⁹
- Lic. Rodolfo Antonio Parker Soto, attorney

As more information has come to light about the Honor Commission, its role has only become less clear. Originally, it was said that the Commission received the SIU file, which by that point had focused on the 47 members of the Atlacatl commando unit, from which came the nine now charged with the murders. Information contradicting this version of events first surfaced in the Moakley report, which cited task force conversations with Gen. Villamariona and Col. Machuca, both of whom denied the Commission had done its own inquiry. According to Machuca, the Honor Commission sought to "motivate the soldiers to tell the truth."⁵⁰ All available evidence indicates that the Commission played little constructive role.

While the identities of those who served on the Honor Commission were not originally released, Defense Minister Larios acceded to Judge Zamora's request on March 20 and provided the names. In early May Judge Zamora cited the members of the Commission to appear. On May 14, the two civilian attorneys, Dr. Augusto Gómez Zárate and Lic. Rodolfo Parker Soto, gave oral testimony to the court, having failed to answer the first summons. According to Gómez, the Honor Commission met at about 6:00 p.m. on January 5 at the offices of the SIU where they were briefed by SIU head Lt. Col. Manuel Antonio Rivas Mejía. Rivas shared with them several kinds of written documentation concerning the SIU's work on the case. The following day the Commission met at National Police headquarters, where they commenced "interviews" with some 30 soldiers, most of them members of the Atlacatl commando unit. Lt. Yushy Mendoza and Col. Benavides also appeared before the Commission.

Gómez Zárate says the Commission "was not created as an investigative organism" and that "the object of these interviews was to try to exalt patriotic values, human rights, and military values, making those involved in the act see that they had to tell the truth, because the interests of the

⁴⁸Diario de Hoy, Jan. 8, 1990; Miami Herald, Jan. 9, 1990; Associated Press, Jan. 9, 1990, as reprinted in The Independent (London).

⁴⁹Dr. Antonio Augusto Gómez Zárate told the judge that he was not officially a member of the Commission, but only served as legal adviser, in contrast to earlier reports. The signatures of both civilian attorneys nonetheless appear on the report.

⁵⁰Interim Report supra note 20, at 35.

Fatherland were in danger" According to the second attorney, the process of "exhortation" lasted about 10 to 20 minutes for each soldier. Lt. Col. Eguizábal Figueroa told the court on May 30 that "said exhortation was practically a monologue, since no questions were posed to the members being exhorted"

Machuca's brief written statement reiterates that the Commission's role was "exhorting each person to amplify his declaration, to tell the truth when interrogated by the SIU, paying attention to military honor and moral, civic, ethical, and professional values, to get to the bottom of events and to preserve the prestige of the Armed Forces." Machuca offers further that on January 12, Rivas informed the Commission that the SIU "had found elements of proof" against Benavides, the two lieutenants, and six enlisted men, "without the Special Honor Commission having participated in the investigation . . ." On the evening of January 12, the Commission informed President Cristiani in the presence of the High Command that it "recommended" the prosecution of the nine now under indictment.

Parker Soto described to the judge a three-stage process in the Commission's work: (1) a visit to the crime scene by Col. Eguizábal and Lic. Parker; (2) analysis of the SIU documentation and sessions with "selected military personnel whose names appear in this documentation, who individually received an exhortation to tell the truth"; (3) delivery to President Cristiani of their recommendations, "which were based on the preliminary investigation carried out by the SIU in which they attributed responsibility [for the crime] to Col. Guillermo Benavides, Lt. Mendoza, Sub. Lt. Guevara Cerritos, and five or six enlisted men."

Gen. Villamariona submitted his written statement to the court on May 23; his testimony mirrors that of the others.⁵¹ Two additional members, Lt. Col. Eguizábal Figueroa and Major Zamora Hernández, testified orally for nearly three hours on May 30 after having failed to answer the first summons.⁵² The final Commission member, Captain Grijalva, appeared before the court on June 1.

In response to Judge Zamora's request, on May 25 President Cristiani sent Judge Zamora a copy of the Honor Commission's seven-page written report. Early on, several members of the commission had said that they had prepared no written report. The Moakley report stated that there "is no known record of any kind concerning the proceedings."⁵³ Despite much public speculation about the Commission's deliberations, President Cristiani did not volunteer that he had a written document until a witness told the judge that such a report had been submitted to the president. On numerous occasions, President Cristiani has publicly urged that anyone with relevant information should present it to Judge Zamora.

The Honor Commission's report sheds no further knowledge on the Commission's inner workings or how it arrived at the findings that are on the public record. In broad strokes the document outlines the reasons for forming the Commission, offers that the SIU had "determined the possible participation of elements of the Armed Forces" and that the Commission was mandated to "support the investigation." In an understated fashion it lists the names of the soldiers and who they killed. Its description of events coincides with that already on the public record. In the report's

⁵¹La Prensa Grafica, May 23, 1990; El Diario de Hoy, May 22, 1990.

⁵²El Mundo, May 30, 1990; La Prensa Grafica, May 31, 1990; Diario Latino, May 19 and 30, 1990.

⁵³Interim Report supra note 20, at 35.

conclusion the board names the nine accused men as those "responsible" and "recommends" that they be turned over to the courts.

The board further recommends that the remaining members of the Armed Forces who were questioned but whose names do not appear among the nine men should be returned to active duty, thereby releasing all others from criminal responsibility. The document leaves no doubt that members of the Commission do not place any responsibility for the crime on the Armed Forces as an institution. Among its conclusions are the following comments:

Both morally and legally, these events can be attributed exclusively to those who carried them out. The Armed Forces as an institution has a firm and unwavering will to promote and protect fundamental rights; this is not a circumstantial expression, but the spontaneous product of consensus, of the conviction of the officer corps, that only by adhering to the law -- and sanctioning those who do not adhere to the law -- will we arrive at an orderly, democratic, prosperous, just, free, and peaceful society. The Armed Forces of El Salvador are prepared morally and technically to meet the terrorist aggression against its people, within the mechanisms contained in the Constitution of the Republic and the nation's laws.

According to a chronology on the case prepared by the State Department, on January 13, President Cristiani announced "the findings of the military honor board, concluding that nine members of the military . . . are under suspicion for the murders."⁵⁴ Noting the confusion, the Moakley task force observed that "[n]either U.S. nor Salvadoran officials with whom the Task Force spoke could explain how President Cristiani was able to announce the names of those charged with the crimes if those names were not provided to him by the honor board, and yet the honor board denies doing anything of the kind."⁵⁵

The confusion around the Honor Commission's role raises a number of questions, including these: Neither the Honor Commission nor Lt. Col. Rivas of the Special Investigative Unit acknowledges choosing the nine defendants from the larger pool of suspects. Some 300 soldiers surrounded the UCA on the night of the killings and over 50 entered the campus. Why were only these nine men selected for prosecution? On what basis were they chosen? What is the original source of the information implicating them in the crime? Should others be prosecuted? Were other officers at the UCA or neighboring military installations⁵⁶ on November 15-16 whose role has not been examined? If neither the Honor Board nor the SIU chose the defendants, who did? On what criteria did they base their decision? Does evidence exist which has not been made public that could implicate other enlisted men or officers or provide further proof against those already implicated?

⁵⁴K. Larry Storrs, "El Salvador -- Legal System, Judicial Reform, and Major Human Rights Cases Involving the Military," Congressional Research Service at 16 (Mar. 23, 1990).

⁵⁵Interim Report, *supra* note 20, at 35.

⁵⁶Within blocks of the UCA are the following military installations: High Command Headquarters, Military Academy, Department of National Intelligence (DNI), the San Benito Battalion of the National Police, and two military residential neighborhoods, Colonia Arce and Colonia Palermo. The Security Forces also maintain constant surveillance from the upper floors of the Torre Democracia, a high-rise glass office tower at one corner of the campus. All these installations were within the special security zone set up on the afternoon of November 13 that was commanded by Col. Benavides.

III. DEVELOPMENTS CONCERNING THE ROLE OF THE UNITED STATES

A. U.S. Major Eric Buckland Offers Key Testimony

In response to the description of U.S. Major Eric Buckland's declarations contained in the Moakley report, Judge Zamora asked that Buckland's January 3 written statement to his superiors be submitted for the court record. This statement was first transmitted to the Salvadoran High Command by the U.S. Embassy in early January. An account in *Diario de Hoy* on June 8 mentioned Major Buckland by name and outlined in detail his story. According to Buckland, on about December 20, 1989 Col. Carlos Armando Avilés of the Salvadoran Armed Forces told him that Col. Benavides had confessed his role in the killings to Lt. Col. Rivas, who heads up the unit investigating the case.⁵⁷ Buckland's statement says that "Lt. Col. Rivas was scared and did not know what to do. As a result, the investigation slowed . . ." The Moakley task force observed that "[d]espite good police work, those now charged with the crime might not have been arrested if an American military officer [Buckland] had not come forward in early January with information concerning the alleged involvement of Salvadoran Col. Alfredo Benavides in the case."⁵⁸

Major Buckland's January 3 statement has been officially entered into the court record. On June 29, Col. Avilés testified before the judge, denying that he made any such statement to Major Buckland. Judge Zamora has requested Major Buckland to appear before the court on July 30.⁵⁹ Given that Major Buckland is covered by the treaty regulating diplomatic immunity, the request for him to testify will be transmitted from the Salvadoran Foreign Minister to the State Department, which must then decide on whether to make the major available. In an April 20 letter to the Department of Defense, the Lawyers Committee noted Major Buckland's role. In its response on May 17, Henry S. Rowen, Assistant Secretary of Defense for International Security Affairs, asked the Committee to refrain from using Major Buckland's name. Assistant Secretary Rowen wrote that the Department of Defense is "concerned about the safety, security, and welfare of the U.S. Major . . ." On June 13, the Lawyers Committee forwarded a series of requests for further information to Assistant Secretary Rowen, and requested a clarification of the nature of the concern for Major Buckland's security. Buckland's name has appeared in the U.S. and Salvadoran press.⁶⁰ To date, we have not received a response to our inquiry.

In his interview with *60 Minutes*, Col. Ochoa was extremely critical of the U.S. Embassy for having revealed the source of its intelligence implicating Benavides. "The American officer put the informant in a very difficult situation, so dangerous he could have been killed." The Embassy's carelessness in revealing the name of its informant, Col. Carlos Armando Avilés, stands in stark contrast to the protection offered Major Eric Buckland.

⁵⁷Testifying before the judge on June 29, Col. Avilés denied that he had mentioned Col. Benavides' alleged role in the killings to Major Buckland, whom he says he does know.

⁵⁸Interim Report, *supra* note 20, at 6.

⁵⁹Judge Zamora also plans to cite Lt. Col. Rivas and Col. López y López to appear before the court. Their testimony could shed light on the early investigation of the crime and Col. Benavides' alleged confession to Lt. Col. Rivas. See Diario Latino, July 19, 1990.

⁶⁰See LA Weekly, Mar. 30-Apr. 5, 1990; Diario de Hoy, May 25, 1990. Major Buckland's name has since appeared in an Associated Press dispatch in the June 9, 1990 issue of the Miami Herald and on June 29, 1990 in the Boston Globe.

B. U.S. Forces Trained Defendants in Days Immediately Preceding Murders

On November 10, 1989, one day before the FMLN launched its offensive, 13 U.S. Special Forces from Ft. Bragg, North Carolina, commenced a training course at Atlacatl Headquarters in Sitio de Nino, La Libertad. Among their students were some 50 members of the Atlacatl's elite commando unit, six of whom are now in custody in connection with the Jesuit killings. According to information provided by the Pentagon to the Moakley task force, members of the 7th Special Forces Group (Airborne) Deployment for Training were actually themselves being tested in "the annual evaluation of the Special Forces Detachment in its ability to conduct Foreign Internal Defense training missions."⁶¹ One outstanding question is why a routine teacher-training exercise would have proceeded given the guerrilla offensive, which, by that point, military intelligence knew to be imminent. Why did the course continue after the commando unit left for San Salvador?

According to the Pentagon, the Atlacatl unit was instructed in "dismounted Infantry Patrol Techniques, Weapons Training, and day and night practical exercises of these subjects." Instruction was interrupted on November 13 when the commando unit was sent to San Salvador to join the military's counteroffensive. The U.S. Special Forces remained in Sitio de Nino and continued teaching those Atlacatl members who "remained behind to secure the base . . ." According to the Moakley task force report, these Green Berets later "spent a day barricaded in the San Salvador Sheraton" when the FMLN occupied the hotel on November 21, 1989.⁶²

On April 20, the Lawyers Committee wrote to Secretary of Defense Richard B. Cheney asking for detailed information on the nature of the U.S. training and the contact between the Green Berets and those charged with killing the Jesuits. On May 17, Assistant Secretary Henry S. Rowen responded to our inquiry by transmitting the Pentagon document provided to the Moakley group.

In correspondence with the Pentagon, the Lawyers Committee has asked U.S. officials to make these trainers from Ft. Bragg available for questioning by the Moakley task force or another appropriate body of the Congress. Their testimony could shed light on why a training course in-progress was interrupted. Why was this elite Atlacatl commando unit sent to San Salvador? What were the troops told when they moved out? Did enlisted men or their commanding officers know at that point that they would be assigned to search the Jesuit residence within two hours of arriving in San Salvador? When did these U.S. trainers learn that their trainees were those who allegedly killed the Jesuits and women? Did the trainers have any contact with these Atlacatl men after the killings?

C. Congressional Caucus Publishes Report on Abuses by the Military

On May 21, the eve of the House vote on aid to El Salvador, the 31-year-old Arms Control and Foreign Policy Caucus of the U.S. Congress released *Barriers to Reform: A Profile of El Salvador's Military Leaders*. The 39-page report profiles 15 of the Armed Forces top commanders, 12 of them members of the graduating class of 1966 known as the *tandona*, which today dominates the institution. Among their findings:

⁶¹This untitled document, which was prepared by the U.S. Military Group at the U.S. Embassy in San Salvador, was transmitted to Congressman Moakley on April 10, 1990 by Carl W. Ford, Jr., Acting Assistant Secretary of Defense for International Security Affairs. The quoted material is on pages two and three in the section responding to "Issue I: U.S. Training relationship with the Immediate Reaction Infantry Battalion (BIRI) Atlacatl and training received by members of the BIRI Atlacatl." There is no consistent pagination within the 25-page document.

⁶²Interim Report, supra note 20, at 15.

- Fourteen of 15 officers in top commands have been promoted despite documented abuses of human rights by troops under their command;
- Eleven of the 14 officers whose troops were accused of abuses received U.S. training;
- Ten of the 15 officers appear to have falsified facts surrounding a human rights crime or allowed their subordinates to do so.

The report is based in large part on fact-finding by Americas Watch and Tutela Legal, the human rights office of the Archdiocese of San Salvador.

While admitting he had not read the report, President Cristiani rejected it out of hand, saying that the themes addressed "were the same used by the Left to discredit the Armed Forces" and said the document had been prepared by "a small ad-hoc committee."⁶³ Further President Cristiani said:

We've heard of this small ad-hoc committee which some members of Congress formed and asked their assistants to prepare a supposed report on some members of the Armed Forces. I have not had time to read it, but it appears instead to me that it's a part of the FMLN campaign in the United States to try to cut the aid to El Salvador.⁶⁴

The bipartisan Caucus, made up of 144 members of both the House and Senate, is chaired by Representative Howard L. Berman (D-Cal.) and Senator Mark Hatfield (R-Ore.) serves as vice-chairman; its Central American task force is chaired by Representative George Miller (D-Cal.).

On May 24 and 25 Salvadoran newspapers carried a press release from COPREFA, the military press office, saying that "three Democratic congressmen [sic] from the United States have acted irresponsibly" by making "groundless and evil-minded" accusations. Defense Minister Gen. Rafael Humberto Larios said the report was part of a "conspiracy" against the army, adding, "this conspiracy is part of the FMLN strategy in Washington."⁶⁵

An unsigned article in *La Prensa Grafica* on May 25 took the rhetoric one step further, saying that the international human rights group Americas Watch's "leftist alignment is well known" and that Tutela Legal is only out to "defend the interests of the FMLN." The paper also mentioned two U.S. reporters whose work was cited in the report, Chris Norton, a stringer for *The Christian Science Monitor*, and Joel Millman. They were termed "correspondents of a communist tendency."⁶⁶

⁶³El Diario de Hoy, May 23, 1990.

⁶⁴La Prensa Grafica, May 23, 1990.

⁶⁵La Prensa Grafica, May 26, 1990, as cited in FBIS-LAT-90-103, May 29, 1990.

⁶⁶Joel Millman's detailed article on corruption and misuse of U.S. military aid by the Salvadoran Armed Forces appeared in the New York Times Magazine on December 10, 1989.

IV. UNANSWERED QUESTIONS

1. Information and speculation has surfaced concerning meetings held in High Command headquarters on the afternoon of November 15 and the night of November 15-16. Accounts have appeared in the U.S. press concerning a meeting of some 20 officers which ended at approximately 10:30 p.m. Col. Sigifredo Ochoa told *60 Minutes* that at another, smaller gathering later that night Col. Benavides was given a direct order to kill the Jesuits. The young officers' communiqué of May 1 mentioned other meetings held at 3:00 p.m. and 5:00 in the office of Col. Zepeda which were attended by Col. Benavides.

What information can members of the High Command as well as other officers provide about any and all meetings held during the period in question? Who was in attendance, and what was discussed? Was there any discussion of the Jesuits or other civilians considered by the military to be supportive of the FMLN? All those who attended these meetings should be questioned and asked for their diaries and all other relevant records.

2. What information can the U.S. Embassy provide relating to the names of those U.S. advisers at High Command headquarters on the night of November 15-16? Can the Embassy provide the names of U.S. personnel at DNI headquarters in the days before, during and after the murders? Each of these advisers should be questioned about what went on. Despite the presence of U.S. personnel in both military installations in the days surrounding the killings, the only U.S. adviser whose testimony has been entered into the record is that of Major Eric Buckland, whose written statement was requested by the judge following an account of his role contained in the Moakley report.

3. Can the Armed Forces provide the names, ranks and military units of all soldiers who were on duty at the main gate to the UCA on the evening of November 13? These men talked with Father Ellacuría and indicated that they knew him. These soldiers should be questioned and asked if they had been told to watch for Father Ellacuría's arrival. Did any of these soldiers report his arrival to anyone?

4. Were there any meetings held at High Command headquarters or the DNI on November 13, 14, 15 in which the return of Father Ellacuría was mentioned? If so, by whom and what was said?

5. Lt. Col. Manuel Antonio Rivas Mejía of the SIU should be questioned about how he conducted the early investigation of the crime. Given that the murders occurred in a zone under Col. Benavides' control, when did Lt. Col. Rivas first question him? According to the court record, Benavides was first contacted by Rivas on January 3, and this was only to ask if Bengal lights were used in the area. Is this correct, or was there an earlier interview? Troops of the National Police and Treasury Police told the SIU on November 17 that Atlacatl men were in the area that night. Jesuits told the court in late November and early December that the Atlacatl had conducted the search of the Jesuit residence on November 13 as well as the search of Loyola Center, a Jesuit retreat, on the afternoon of November 15. Why did the SIU delay in actively investigating the role of the Atlacatl until mid-December?

When did the SIU first learn who controlled the Security Zone which included the university? What action did they take at that time? Did the SIU question the officer in charge of this zone? If so, when? What was discussed? If no interview took place, why not?

Does the SIU maintain a list of visitors? If so, will they make available the registry from November 16 through January 12?

Aside from the documents which have been provided to the court, are there any other documents, notes, etc., contained in SIU files about the case? Were any other steps taken or interviews conducted which do not appear in the file and/or have not been reported to the court?

When did the SIU learn that the Military Academy registries had been burned? How did the SIU learn this? What actions were taken with respect to this destruction of evidence?

6. The sworn statement of High Command chief Col. René Emilio Ponce to the court raises the following questions: The search of the Jesuit residence was conducted in response to a report that FMLN combatants were firing on military personnel from inside the campus. What is the source of this information? What is the explanation for the fact that the list of Atlacatl men who participated in the search is significantly smaller than the 135 men mentioned by Lt. Espinoza in his extrajudicial declaration? What is the source of the information that the Pastoral Center was attacked by the FMLN at 12:30 a.m. on November 16? According to Col. Ponce, the search of the Jesuit residence was conducted at 8:50 p.m., when in fact it was conducted at 6:30 p.m., just one half hour after curfew. The report of the Honor Commission says that the search was authorized by C-3 at 5:30 p.m. and carried out at 8:30 p.m. What is the explanation for this discrepancy? Who actually requested that a search be conducted?

7. Col. Cerna Flores, at the time the head of Operations (C-3), signed the order to transfer the Atlacatl troops from their La Libertad barracks to the Military Academy, thereby interrupting the training course conducted by trainers from Ft. Bragg. Why did he decide to bring these men to San Salvador? Was he ordered to do so? If so, by whom? Was it known when the order was given that these men would search the Jesuit residence some two hours later? What were the members of the Atlacatl commando instructed to look for when searching the residence? Was a written report filed? If so, the report should be provided to the court.

8. Can the High Command clarify who was in charge of the commando unit of the Atlacatl Battalion (and other 80 troops mentioned by Espinoza in his extra judicial declaration) during the period November 13-16? Was the Atlacatl commando unit responsible to Col. Benavides or to the High Command? During what period? To which officers did it report? Who ordered them to patrol the area around the UCA? Who decided when they should rejoin their battalion? During that period, did these Atlacatl troops have to report to Atlacatl Commander Col. Oscar León Linares?

9. What was the chain of command during the period November 13-16? To whom did Col. Benavides report? Who gave him orders? What operations could he undertake without consulting more senior officers? Did he have to report each order? What written reports did he keep for his own records, for his superiors, or for the Military Academy? Where are these documents? When was their location determined?

APPENDIX

The Armed Forces on the Defendant's Stand*

When the army murderers decided to carry out the UCA massacre, they did not suspect that it would be much more difficult than usual to escape justice. Every day we see more and more individuals drawn into the lie and the coverup which could insure impunity for those guilty. The burning of the Military Academy's log books is only one strand of the murky web of deceit which is leading to the heart of the army as the guilty party, and to the highest levels of government as the entity responsible -- willingly or not -- for the coverup of the massacre.

The destruction of the logbooks, aside from the fact that this act constitutes another serious crime perpetrated by members of the Armed Forces, adds to the already plentiful and solid indications of much deeper involvement in the massacre on the part of members of the High Command. According to the Special Investigative Unit (SIU) of the Investigative Commission, between December 1-16, the deputy director of the Military Academy at the time, Maj. Carlos Camilo Hernández -- later promoted to lieutenant colonel a short time later based on his "merits" -- ordered Lt. Col. Yussly Mendoza to remove the log books for the period November 15-16. Mendoza and four other cadets allegedly burned them at midnight on one of the two days.

One is led immediately to suspect that Maj. Hernández "coincidentally" commissioned Lt. Mendoza, a defendant in the case, to pick up the log books. The destruction of the books, carried out at night, reinforces the hypothesis that Mendoza and his fellow soldiers were acting unlawfully. On the other hand, it is hard to believe that Mendoza, having received direct instructions from Hernández, would have decided to destroy something which his superior had ordered him to protect. It would be even more incredible if he had decided to take such a risk, raising unnecessary suspicion, if during that period there was still no evidence of his participation in the crime; nor is it logical that he had anything to fear from the log books, given that he was stationed in the Military Academy, and under the emergency conditions prevailing at the moment his name would naturally appear in several places in the log book.

In more general terms, no one formally assigned to the Military Academy had any reason to fear that his name would have been registered in the book during the November offensive. In retrospect, once the charges against Col. Benavides were made public and the murderers were identified, only an officer superior to Col. Benavides and present within the Military Academy on the night of the crime could have had good reasons to want his name erased from the logbooks.

Of course, President Cristiani would dismiss such a hypothesis as "speculative." This can be inferred from his statements published in *El Diario de Hoy* on May 29, in which he claims that Maj. Hernández "removed the books from the Military Academy, but only in order to protect them." Since the President never speculates on this case, he should explain when he actually questioned Hernández in order to find out if it was his intention to protect the books, and what suspicions motivated Hernández to decide to protect the books, entrusting them to none other than Mendoza.

*Editorial originally published in Spanish in *El Proceso*, May 30, 1990.

Apart from the importance of the details, as told by the SIU, surrounding the destruction of the logbooks, it is also interesting to note the sequence that was followed when the relevant authorities were notified about the fate of the log books. The first official information about the missing logbooks was furnished at the end of March by the head of the SIU, Lt. Col. Rivas Mejía, who cited a source in the Military Academy. The first public information on the event appeared two months later, on May 5, in a morning daily, which published that officials of the Military Academy had notified Judge Zamora that the logbooks in question had been "misplaced." On May 7, President Cristiani announced that the whereabouts of the misplaced logbooks must be investigated, downplaying the importance of it all by claiming that the cadets who stood guard and who would soon go before the judge would provide the information contained in the books (the only information they supplied was that they were asleep on the night of the massacre). On May 9, in Costa Rica, Cristiani denied that any logbooks had been misplaced, although one day later, upon his return to San Salvador, he ordered an investigation of their whereabouts. On May 23, the Fourth Criminal Court Judge issued a clarification in which he stated that he had not yet received the misplaced logbook that the President had recently said was found. On May 28, Cristiani himself admitted that the logbook had been destroyed, after the Supreme Court made public a report in which the SIU narrated the details of the destruction of the log books.

The behavior of the SIU that emerges from this brief chronology can be characterized at best as unfortunate and at worst outright complicity. In the first place, the loss of the logbooks must be attributed to the SIU's negligence, since from the beginning of the investigation it did not request all possible information from the command center which had the UCA militarized on the night of the massacre. Even more suspicious is the fact that after finding out at the beginning of January that the murders originated from the Military Academy, it was not until the end of March that Lt. Col. Rivas Mejía discovered that the log books had been "misplaced." Furthermore, two more months went by before it could be determined that the logbooks had actually been incinerated. At the end of March, the SIU also gave Judge Zamora the names of four cadets who turned out to have been asleep on the night of the murders, producing a delay of one more month in the questioning of those who were really on guard, to the detriment of memories prone to forgetfulness. At best, the cadets in question will give their testimony more than six months after the date on which the SIU should have questioned them if it had acted professionally.

President Cristiani, who so zealously defends the purity of the judicial process, comes out looking even worse than the SIU with respect to the burned log books. The decision he took in Costa Rica to spare himself the embarrassment of admitting that his highest ranking military officials dared to "misplace" evidence of a crime that the entire world has followed does not merit further comment. Nor is there any great need to go into detail about the dangerous ignorance he displayed when he downplayed the importance of the missing logbooks, even when Ambassador Walker figured out that the disappearance of evidence also constitutes a serious crime. The fact that Cristiani claimed that the logbooks were found (when in fact they had been incinerated) no longer seems to derive from his need to get out of the fix he is in with world opinion, nor to hide from the baying of the Salvadoran press, when in fact the judge finally had to state publicly that the books had never reached his hands. Here the President seems to be the prisoner of deceit or of some other "involuntary mistake," like the one in which the new directors of the Military Academy sent to the judge the names of the cadets who stood guard on December 15-16 instead of the names of those who stood guard in November 1989.

The most regrettable part of the situation is that the Commander-in-Chief of the Armed Forces must recognize that he is neither able or willing to do anything in response to all the misconduct, crimes and dishonor displayed by the army. He claims that the destruction of evidence is a matter to be dealt with by the judicial branch. Were not the ones who burned the log books his subordinates? The judge is in charge of the Jesuit case, but he does not have the power to purge the Armed Forces of its criminals and delinquents. If the military persists in making all the evidence vanish, what evidence can be introduced in court?

Even after all this, President Cristiani dismisses as "capricious" the demands to purge the Armed Forces, and he continues to demand "proof" in the case, proof which, once destroyed, passes on to become the exclusive responsibility of the judicial branch. César Vielman Joya, former death squad member of the First Infantry Brigade, has offered to provide proof, as a witness with first hand knowledge of the workings of the Armed Forces, asking only that he be protected from meeting the same fate as the Military Academy's log books.

If the investigation of the UCA massacre continues along the same path, the lie concocted to protect the murderers will end up crashing down on top of all of its creators and their accomplices.